

A Tai Sua Koong v Perumahan Teknik Villa Sdn Bhd

B HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22–467 OF 2009
SEE MEE CHUN JC
27 NOVEMBER 2013

C *Civil Procedure — Pleadings — Departure from — Special damages — Not pleaded — Whether plaintiff entitled to special damages — Rules of Court 2012 O 18 r 10(1)*

D *Contract — Rescission — Sale and purchase agreement — Rescission of purchased shop lot — Vacant possession delivered an empty lot earmarked for kindergarten — Whether fundamental breach — Whether allegations of misrepresentation, deception or fraud established — Whether plaintiff entitled to terminate agreement — Whether lack of action by relevant authorities detract from plaintiff's claim*

E The plaintiff's claim was for the rescission of the sale and purchase agreement (S & P) entered into with the defendant and for special damages. As per the S & P, the defendant was to develop a housing development known as Perdana Villa ('the project') whereby the plaintiff had purchased a unit known as Parcel No A-G-12 ('the unit'). The plaintiff had also been appointed by the defendant as the sole marketing agent for the project. The plaintiff contended that when he took vacant possession of the said unit it was an empty lot. The plaintiff's search with the Klang Municipal Council ('KMC') revealed that the said lot was earmarked as a kindergarten and therefore was a common service area and not available for sale to the public. Hence, the plaintiff alleged that the defendant had clearly misrepresented and/or deceived and/or defrauded the plaintiff. The plaintiff further claimed for defamation in that he had been sued by one Tay Kong Leong (Tay) for having sold to Tay unit No A-G-10 in his capacity as marketing agent and this resulted in damage to his reputation. The defendant however, contended that what had been delivered was a shop lot. The plaintiff being its sole marketing agent had proposed the ground floor be made a business unit. Further, the plaintiff had relied on outdated records in KMC as there was an approved amendment to the building plan. The issue raised in this case was whether the said unit which was handed over by the defendant to the plaintiff was a shop lot or otherwise and if the said unit was not a shop lot could the plaintiff terminate the S & P.

Held, allowing the plaintiff's claim with costs:

- (1) The plaintiff had proven its claim against the defendant that the former

had misrepresented him on the type of property vis-a-vis the said unit, misrepresented that the said unit was for sale when it could not be; and defrauded the plaintiff by selling him a unit that was not for sale. It was clear that where there had been a fundamental breach and the plaintiff was at liberty to terminate the S & P. In this case, the plaintiff obtained the delivery of an empty lot earmarked for kindergarten when he had purchased a shop lot such that there was a fundamental breach (see paras 12–13).

- (2) The lack of action by the relevant authorities to the plaintiff's police report and letters of complaints to MPK and the Ministry of Housing and Local Government, did not necessarily detract from the plaintiff's claim. Suffice it to say that the plaintiff had proven its case on the required standard of proof for the reasons given. In any event, PW3 had stated that KMC had not taken action as S & P was not within its jurisdiction (see para 15).

[Bahasa Malaysia summary]

Tuntutan plaintiff adalah bagi pembatalan perjanjian jual beli ('PJB') yang dibuat dengan defendan dan untuk ganti rugi khas. Seperti di dalam PJB, defendan dikehendaki membangunkan kawasan perumahan yang dikenali sebagai Perdana Villa ('projek') di mana pihak plaintiff telah membeli unit yang dikenali sebagai Petak A-G-12 ('unit'). Plaintiff telah juga telah dilantik oleh defendan sebagai ejen pemasaran tunggal untuk projek tersebut. Plaintiff menegaskan bahawa apabila dia mengambil pemilikan kosong unit tersebut adalah lot kosong. Carian plaintiff dengan Majlis Perbandaran Klang ('MPK') mendedahkan bahawa lot tersebut telah dikenal pasti sebagai sebuah tadika dan oleh itu adalah kawasan awam dan tidak boleh dijual kepada orang ramai. Oleh itu, plaintiff mendakwa defendan telah dengan jelas salah nyata dan/atau ditipu dan/atau ditipu plaintiff. Plaintiff seterusnya mendakwa kerana fitnah bahawa dia telah didakwa oleh satu Tay Kong Leong ('Tay') kerana telah menjual kepada Tay unit No A-G-10 dalam kapasitinya sebagai ejen pemasaran dan menyebabkan kerosakan kepada reputasinya. Walau bagaimanapun, defendan menegaskan bahawa apa yang telah diserahkan adalah lot kedai. Plaintiff menjadi ejen pemasaran tunggalnya telah mencadangkan tingkat bawah dijadikan unit perniagaan. Selanjutnya, plaintiff telah bergantung kepada rekod lapuk di MPK memandangkan terdapat pindaan yang diluluskan kepada pelan bangunan. Isu yang dibangkitkan dalam kes ini adalah sama ada unit tersebut yang telah diserahkan oleh defendan kepada plaintiff adalah lot kedai atau sebaliknya dan jika unit tersebut bukan lot kedai bolehkah plaintiff menamatkan PJB.

Diputuskan, membenarkan tuntutan plaintiff dengan kos:

- (1) Plaintiff telah membuktikan tuntutannya terhadap defendan bahawa defendan telah salah nyata kepada plaintiff akan jenis hartanah vis-a vis

- A unit tersebut, salah nyata bahawa unit tersebut adalah untuk dijual apabila ia tidak boleh dijual; dan menipu plaintif dengan menjual unit yang bukan untuk dijual. Ia adalah jelas bahawa jika ada telah berlaku kemungkiran asasi dan plaintif adalah bebas untuk menamatkan PJB.
- B Dalam kes ini, plaintif memperolehi penyerahan lot kosong diperuntukkan untuk tadika apabila dia telah membeli sebuah rumah kedai oleh itu terdapat kemungkiran asasi (lihat perenggan 12–13).
- (2) Kekurangan tindakan oleh pihak berkuasa relevan terhadap laporan polis plaintif dan surat aduan kepada MPK dan Kementerian Perumahan dan Kerajaan Tempatan, tidak semestinya menjejaskan tuntutan plaintif.
- C Cukup untuk mengatakan bahawa plaintif telah membuktikan kesnya dengan standard bukti yang diperlukan untuk alasan yang diberikan. Dalam apa-apa keadaan, PW3 telah menyatakan bahawa MPK tidak mengambil tindakan memandangkan PJB tidak berada dalam bidang kuasanya (lihat perenggan 15).]
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Notes

For cases on departure from pleadings, see 2(3) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 6396–6407.

- E For cases on sale and purchase agreement, see 3(3) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 6001–6010.

Cases referred to

- Abdul Razak bin Datuk Abu Samah v Shah Alam Properties Sdn Bhd and another appeal* [1999] 2 MLJ 500; [1999] 3 CLJ 231, CA (refd)
- F *Hwa Chea Lin & Anor v Malim Jaya (Melaka) Sdn Bhd* [1996] 4 MLJ 544, HC (refd)

Legislation referred to

- G Rules of Court 2012 O 18 rr 10(1), 12(1)
- Roszimah bt Jamrus (Kam Woon Wah & Co) for the plaintiff.*
Heng Hiang Swee (The Law Office of Heng Hiang Swee) for the defendant.

See Mee Chun JC:

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- [1] This is the plaintiff's claim for the rescission of a sale and purchase agreement dated 15 February 2003 (B 3–46, S & P) entered into with the defendant and for special damages. As per S & P the defendant was to develop a housing development known as Perdana Villa ('project') whereby the plaintiff had purchased a unit known as Parcel No A-G-12 ('the said unit') for a price of RM101,800 ('the purchase price'). The plaintiff had also been appointed by the defendant as the sole marketing agent for the project. In the agreed facts marked E, it is stated the plaintiff had purchased a shop lot (para 5). The S &
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P was prepared by Messrs Azam-Malek & Soh as the plaintiff's solicitor. It is further an agreed fact in para 6 the solicitor had wrongly and mistakenly prepared S & P by attaching the floor plan, layout plan and specifications pertaining to house apartment instead of a shop lot. On 24 January 2006 the plaintiff received a letter from the defendant the said unit was ready for delivery of vacant possession. The plaintiff says when he went to inspect the said unit it was an empty lot and did not have, inter alia, internal partition, main entrance lot, flooring tiles, wall tile for kitchen sink, wash basin, kitchen sink and there was one less toilet/bath. The plaintiff's search with the Klang Municipal Council ('KMC') revealed the said lot to be earmarked as a kindergarten and therefore a common service area and not available for sale to the public. In para 15 of statement of claim it is stated the defendant had 'clearly misrepresented to and/or deceived and/or defrauded plaintiff'. The particulars of misrepresentation/deceit/fraud as given are misrepresentation on type of property; misrepresentation and/or deceit the said unit was available for sale when it was not; fraud in selling to the plaintiff a unit which was not available for sale and cheating the plaintiff by selling an unliveable and/or unusable (*tidak boleh didiami dan/atau tidak boleh digunakan*) for the price paid by the plaintiff. In the alternative there has been a total failure of consideration. The plaintiff had terminated S & P by letter dated 11 May 2006 (B56-57). The plaintiff further claimed for defamation in that he had been sued by one Tay Kong Leong (Tay) for having sold to Tay unit No A-G-10 in his capacity as marketing agent and this resulted in damage to his reputation.

[2] It was the defendant's contention what had been delivered was a shop lot. The plaintiff being its sole marketing agent had on 18 December 2002 proposed the ground floor be made a business unit. The plaintiff had relied on outdated records in KMC as there was an approved amendment to the building plan. The plaintiff had been given the marketing brochure which consisted of site plans, layout plans and specifications of the project.

ISSUES TO BE TRIED

[3] The agreed issues to be tried (F) are whether the said unit which was handed over vacant possession by the defendant to the plaintiff vide letter dated 24 January 2006 was a shop lot or otherwise and if the said unit is not a shop lot can the plaintiff terminate S & P. The plaintiff says it was an empty lot earmarked as a kindergarten while the defendant says it was a shop lot. Since the primary issue as framed is what was ultimately the type of unit handed over, the mistake in the S & P describing the said unit as residential is not material to the determination of the issue. In agreed fact no 5 it is stated the plaintiff had purchased a shop lot and in para 6 it is agreed there was a mistake in S & P where the plans for house apartment had been attached instead of that of shop lot.

- A [4] By the same token the allegation of non-compliance of O 18 r 12(1) of the Rules of Court 2012 by the plaintiff in not giving particulars of the misrepresentation or fraud relied on is without merit.

TYPE OF UNIT HANDED OVER

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(a) Evidence

- C [5] The plaintiff gave evidence as PW1 and his witness statement is marked as WSP1. He stated he received a letter from the defendant dated 24 January 2006 (B1) that construction of the said unit had been completed and it was ready for delivery of vacant possession. This letter was received at the end of March 2006. A few days later he went to inspect the said unit. An officer from site management office showed him the said unit and opened the door. What he found was empty space (*satu bahagian ruang kosong yang amat luas terdiri daripada empat atau lima unit lot kosong*) and not shop lot or apartment. He took some photographs as in B139 on 28 April 2006 and B140–143 on 3 May 2006. He was sure about the dates as he had written them at the back of each photograph taken. No negatives were kept as he did not realise the importance of keeping them. The construction work as shown in B140–141 were done by the defendant. In cross-examination he said the photographs were that of the said unit and construction work had been completed. He disagreed they were not the said unit and denied they were taken before 1 January 2006. The dates were inserted by him and are not in the photographs. The said unit is now a shop lot. In re-examination he was sure about the dates of the photographs as he had gone to the site for vacant possession and shown the said unit.

- G [6] PW2 was Tay Kong Leong who had bought a unit next to the plaintiff, A-G-10. He and the plaintiff are friends. He had bought a shop lot from the defendant and he did not get anything (*tidak dapat apa-apa*). He has filed a suit against the plaintiff and the defendant and his cause of action against the defendant is misrepresentation as *ruang kosong* was handed over. In cross-examination he agreed vacant possession was given but he had not taken delivery. What he meant by *tidak dapat apa-apa* was *bukan yang dikehendaki*. H He disagreed a shop lot would be *ruang kosong*. In re-examination he said the *ruang kosong* was for a kindergarten and not shop lot. If at the time of hand over the unit was a shop lot he would have taken possession.

- I [7] Haslinda bt Mohd Rantam (Architect, Building Department, MPK) gave evidence as PW3 and her witness statement is marked as WSP3. She had vetted defendant's application for certificate of fitness ('CF') for the project. She confirmed B145 to be the site plan for the project which was submitted on the defendant's behalf on 7 August 2001 and approved by MPK on 27 March 2002. From the site plan five blocks were to be developed — A, B, C, D and E.

She confirmed B144 to be the ground floor plan for the blocks. She shaded in yellow the words 'Block A'. The ground floor of Block A was meant for shop, kindergarten, office and library. There were ten units allocated for shop lot, one for kindergarten, one for library and two for office. PW3 marked 'X' to denote kindergarten and shaded the doors orange. The broken lines at the lot for kindergarten was the column and she marked the party wall in green. She stated the kindergarten lot as indicated in B144 could only be sold as a kindergarten. The plaintiff had met her over his letter of complaint dated 3 May 2006 and she told him the property he bought was a kindergarten and ought not to have been sold as a shop lot. She did not know from the lot marked as kindergarten which unit had been bought by the plaintiff. The defendant had submitted its plan to amend the lot for kindergarten at Block A and half of it was changed to two units of shop lot which she marked in red lines in B144. The application to amend was submitted on 19 January 2006 and approved on 9 June 2006. As at 24 January 2006 the lot marked as kindergarten was still intended for a kindergarten. In cross-examination she agreed no unit number was stated in the area indicated as kindergarten in B145. She also agreed the unit number was not shown in the 'X' for kindergarten in B144. She was referred to B 149 which she said was the amendment plan approved by MPK. She stated A-G-12 was not indicated and when asked whether that with the number 12 in the area marked as shop was A-G-12 she was not sure. She could only be sure if she visited the site. Since the approval of the amendment she has not been to the site. She marked 'X' to indicate kindergarten in B 149. On the plaintiff's letter of complaint no action was taken against the defendant as this was a matter between developer and purchaser and S & P was not within MPK's jurisdiction. Even if there was any truth to the complaint no action could be taken but MPK would normally write to the developer for action. She was not sure if MPK had written to the developer. Earlier when she said she did not know which lot marked as kindergarten had been bought by the plaintiff it was with reference to B144 and B145. She has not seen B150 and this is the plan approved by Director of Survey and not MPK. Upon request of the defendant's counsel and for ease of reference, kindergarten in B149 was marked as 'X' and that next to it as 'X1' and in B150 the shop in box No 4 as 'Y' and shop in box No 6 as 'Z'. She agreed 'X' was the same with 'Z' and 'X1' the same with 'Y'. She was not sure if she has seen B148 as this was prepared by Planning Department. The furthest right in B148 is the same with 'Y'. In re-examination when asked on the difference between B149 and B144 she stated B149 is the amendment approved on 9 June 2006. In MPK there are various departments and B148 is with regard to planning approval. She visited the site before the amendment to building plan. The department which normally takes action on letters of complaint such as the plaintiff's is building.

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- A [8] Nasaruddin bin Nordin (D's Project Planning Director) gave evidence as DW1 and his witness statement is marked as WSD1. He managed the project from commencement to completion and he was responsible to obtain the necessary approvals. He referred to B148 as the layout plan approved by Director of Town Planning MPK and this showed the type of building approved to be built, B149 as the approved site plan by MPK and B150 as the floor plan approved by Director of Survey. He disputed the plaintiff's claim as what was sold to the plaintiff was a shop lot. This was because the said unit was completed as a shop lot, what was ready to be handed over as at 24 January 2006 was a shop lot, the plans in B148, 149 and 150 showed the said unit to be a shop lot and the plaintiff being its sole marketing agent would have been aware of all information on the project and P himself had proposed the ground floor be made a business unit. He marked A-G-12 on B144, 145, 148 and 150. On the photographs he said these showed a shop and this was based on B140. The photographs were taken before the date for delivery of vacant possession based on the physical condition of the unit. The said unit being a shop lot followed the specifications as in the plan and was empty space (*ruang kosong*) with one toilet and cement floor. In cross-examination DW1 said he has a diploma in town planning and has been working with the defendant since June 2001. B148 was submitted as planning approval had to be obtained before the commencement of work. B149 is the amended approved plan. As between B148 and 149 B 148 was earlier. It was submitted in 2001 and not on 22 January 2008 which was the consultant's marking. B49 showed the amendments. He agreed there was no amendment to *surau* and *dewan serbaguna*, the kindergarten was reduced from 3,448psf to 1,731psf, the library was reduced in size and the shop increased to 4,280psf. He disagreed the shop space was amended as there were originally two blocks of shop. He referred to B144 in order to show the amendment. He said Block A originally had 17 units of shop lot and disagreed it was ten. It was 17 as beside the MC office, there were two units, beside kindergarten one, beside water tank one, beside library two. He disagreed those units he considered as shops were marked library, kindergarten and MC office. He agreed B149 was approved on 9 June 2006. The plan in B144 was attached to S & P as in B21. In B21 he marked in green A-G-12. He disagreed what he marked as A-G-12 was originally kindergarten as marked 'X' in B 144. He disagreed when S & P was signed the said unit was not a shop or that it was kindergarten. He agreed the photographs were of Block A. Photographs 3, 4 and 5 in B140–141 showing the residential units on top had been completed with finishing. He disagreed they were taken after B149 was approved. The construction work shown in the photographs were done by the defendant. The defendant did not take any photographs at the time of vacant possession. As to whether work at the ground unit had to be completed before proceeding to work on the upper unit he said this depended on the type of work; for main structure it was ground to up, finishing from up to ground and plastering from up to ground. Plastering is done after the structure and brick work, it can also be done ground to up. When asked why
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the ground unit appeared '*ketinggalan*' his reply was '*dia kedai, macam unit ini dia outlook, apa fasad luar, yang kedai pun masih ada yang dalam yang kita plastering*'. This was only *kerja* outlook. He agreed the unit had been painted. He disagreed the work as shown in the photographs were renovation. B145, 144, 145 and 149 were the plans showing the said unit as shop lot.

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(b) *Finding*

[9] Various plans were put forth before the court. They were B144 (ground floor plan approved by *Yang Dipertua* MPK), 145 (site plan approved by *Yang Dipertua* MPK), 149 (amended ground floor plan approved by *Yang Dipertua* MPK), 148 (layout plan approved by *Pengarah Perancang Bandar* MPK) and 150 (floor plan approved by *Pengarah Ukur dan Pemetaan* Selangor).

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[10] B144, 145 and 149 are the relevant documents in question as to what the said unit was at time of S & P on 15 February 2003 and vacant possession on 24 January 2006. This is because these documents were confirmed by PW3 who was the officer who vetted the defendant's CF application for the project. In B145 PW3 had marked 'X' to denote kindergarten as it originally was prior to the amendment. There were ten units allocated for shop lot, one for kindergarten, one for library and two for office. The kindergarten lot could only be sold as kindergarten. This would thus be the position as at time of S & P. This is because the amendment to ground floor plan was submitted on 19 January 2006 and approved by MPK on 9 June 2006 as stated by PW3 and confirmed by DW1. The approved amended ground floor plan is in B149. With the amendment half of what was allocated to kindergarten was changed to two shop lots and this was marked in red lines by PW3 in B144. From B 144 and B 149 the amendments to the ground floor to Block A can be shown where DW1 agreed the size of kindergarten had been reduced. Hence PW3's evidence half of kindergarten was changed to two shop lots as indicated by the red lines is cogent. Although PW3 could not ascertain where the said unit was in relation to B144 and 145 as compared to DW1 who positively identified the said unit and marked it as such what is important is PW3 could identify the kindergarten in B144 and 145 and that the amendment where half the kindergarten was changed to two shop lots was only approved on 9 June 2006. This meant that at all times before 9 June 2006 which would include date of S & P on 15 February 2003 and vacant possession on 24 January 2006 the said unit was earmarked as kindergarten. As per the evidence of PW3 a kindergarten lot can only be sold as a kindergarten. What was marked by DW1 as the said unit in B144 to be shop lot was within the two shop lots which had been approved for amendment from the lot for kindergarten. This showed the position after amendment. B148 does not support the defendant as it is a layout plan for purpose of planning approval and is not as detailed as B144 and 149. B150 was approved by another department and not MPK and although it

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A is floor plan for the project, no one from the Department of Survey was called to explain and it is not open to the court to surmise the purpose and accuracy of the plan and its connection to B145, 144 and 149 even if as was DW1's evidence B150 was submitted in 2001.

B [11] With regard to the photographs in B 139–143, the plaintiff stated it was taken after date of vacant possession specifically on 28 April 2006 and 3 May 2006 whereas DW1 said it was before vacant possession. It was put to the plaintiff they were taken before 1 January 2006 which he denied. DW1 agreed with the plaintiff's evidence these were in Block A and the defendant had done the construction work as shown in the photographs. Although no date was indicated in the photographs I accept the evidence of the plaintiff it was taken after vacant possession as there would have been no reason for him to go before then to inspect the said unit. He would not have been shown the said unit by the site management office if the project was still under construction. DW1 agreed the residential units above the ground floor were completed. When asked if work at the ground unit had to be completed before proceeding to work on the upper unit he said this depended on the type of work; for main structure it was ground to up, finishing from up to ground and plastering from up to ground. However it was not satisfactorily explained why the upper floor had been completed before the ground unit. Photograph No 1 in B139 shows an empty unit. This supports the evidence of the plaintiff he was to be handed an empty space which was earmarked for kindergarten.

F [12] Accordingly the said unit that was to be handed vacant possession to the plaintiff vide letter dated 24 January 2006 was an empty unit intended to be a kindergarten and it was not a shop lot. As the agreed facts were the plaintiff had purchased a shop lot and there was a mistake in S & P where the plans for house apartment had been attached instead of shop lot, it is not necessary to go into standard of proof for misrepresentation and fraud as submitted by the defendant's counsel. The plaintiff has proved its claim the defendant had misrepresented on the type of property vis-a-vis the said unit, misrepresented the said unit was for sale when it could not be; and defrauded the plaintiff by selling to the plaintiff a unit which was not for sale.

H WHETHER P CAN TERMINATE S & P

I [13] It is clear the plaintiff can terminate where there has been a fundamental breach. In *Hwa Chea Lin & Anor v Malim Jaya (Melaka) Sdn Bhd* [1996] 4 MLJ 544 it was said 'since the the plaintiffs did not get delivery of a house in the accepted sense clearly a fundamental breach had occurred' such that there could be rescission. Here too the plaintiff would be getting delivery of an empty lot earmarked for kindergarten when he had purchased a shop lot such that there is a fundamental breach. In *Abdul Razak bin Datuk Abu Samah v Shah*

Alam Properties Sdn Bhd and another appeal [1999] 2 MLJ 500; [1999] 3 CLJ 231 it was stated at p 506 (MLJ); p 237 (CLJ): **A**

6 The courses open to an innocent party in a case where there is a breach of an essential term of the contract does not include a right to have the contract set aside and to return to status quo. Any termination by the innocent party only has effect upon the performance of future obligations. **B**

[14] The same goes here where the termination is only as to the performance of future obligations and not to treat S & P as void ab initio. This is further indicated in *Abdul Razak bin Datuk Abu Samah* also at p 506 (MLJ); p 237 (CLJ), para 7 where the court stated although the right of an innocent party to put an end to future obligations is referred to as the right to rescind and the act of termination is rescission it is erroneous and misleading. This is because true rescission places parties on a footing as though a contract had never been entered whereas the so called rescission is nothing more than the act of terminating future obligations. **C**

S & P can therefore be rescinded in the sense of terminating future obligations. **D**

NO ACTION BY OTHER AUTHORITIES **E**

[15] It was contended by the defendant that the lack of action by the relevant authorities to the plaintiff's police report and letters of complaints to MPK and Ministry of Housing and Local Government showed there was no truth to the plaintiff's claim. The lack of action does not necessarily detract from the plaintiff's claim. It suffices to say the plaintiff had proven its case on the required standard of proof for the reasons given. In any event PW3 had stated MPK had not taken action as S & P was not within its jurisdiction. **F**

SPECIAL DAMAGES **G**

[16] The defendant had submitted the special damages being claimed by the plaintiff in its written submission differs from that of its statement of claim and therefore ought to be dismissed. Order 18 r 10(1) of the Rules of Court 2012 was relied on where a party shall not in any pleading make any claim inconsistent with a previous pleading. Paragraph 1(b) for refund of full purchase price is reflected in paras 19(b) and (c) of statement of claim, para 1(c)(i) on MRTA in para 19(a) of statement of claim, para 1(c)(ii) on legal fees for S & P in para 19(f) of statement of claim and para 1(c)(iv) on interest for loan in para 19(d) of statement of claim. **H**

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A [17] On the refund of purchase price, cl 3 of S & P states it to be RM101,800. The plaintiff had paid the 10% deposit of RM10,180 as in B 66. The loan taken up was RM90,000 as in B67–73 and B77–82. The differential sum of RM1,620 was paid by the plaintiff as in B47 and 48. RM1,600 for MRTA is reflected in the same loan documents of B67–73 and B77–82. On
B legal fees for S & P the bill is B74 and although the lawyer who prepared S & P (PW4) said he could not locate the bill there is no reason not to believe this was incurred. On interest the plaintiff explained how the figure of RM52,027.40 was obtained — ‘gunakan financial calculator untuk 15 tahun pinjaman interest rate, jumlah loan amaun is RM91,600. Interest rate saya
C gunakan BLR 6% sepatutnya 6.6 tap! kes ini saya guna 6% tambah lagi split 0.5% jadi 6.5%. Saya dapatkan calculation RM52,027.40’ (p 15 notes of evidence 3 October 2013). This evidence is consistent with the loan documents in B67–73 and B77–82.

D [18] In *Abdul Razak bin Datuk Abu Samah v Shah Alam Properties Sdn Bhd and another appeal* the court said at pp 509–510 (MLJ); p 241 (CLJ):

... The plaintiff is therefore only entitled to recover all expenditure reasonably and properly incurred in consequence of and flowing from the fraudulent misrepresentation, whether before or after the date of rescission.

E ... the reimbursement of interest paid by the plaintiff ... constitute expenditure which the plaintiff reasonably and properly incurred in consequence of the defendant’s fraudulent misrepresentation. They are therefore recoverable by the plaintiff ...

F [19] The special damages submitted in paras 1(c)(iii), (v) and (vi) were not pleaded and are therefore dismissed.

G DEFAMATION

[20] No evidence was led on this claim and it is dismissed.

CONCLUSION

H [21] The plaintiff’s claim in paras 21(a), (b) for special damages of refund of purchase price of RM101,800, MRTA of RM1,600, legal fees on S & P of RM500 and interest of RM52,027.40 on loan and (c) for interest at 4% is allowed and (d) and (e) is dismissed. Costs to the plaintiff.

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Plaintiff's claim allowed with costs.

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Reported by Ashgar Ali Ali Mohamed

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